IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NOS : 28496 of 1996 and 33373 of 1997

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Dated: 12th July 2007.

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WRIT PETITION NO:28496 of 1996

Between:

T.Sreeramulu, son of Pullaiah, aged about 39 years, r/o Chandramukulappale, H/O Angajalapalle, Settivaripalli Gram Panchayat, Gurramkonda Mandal, Chittoor District.

..... PETITIONER

AND

Special Commissioner of Land Revenue, Hyderabad and others.

.....RESPONDENTS

WRIT PETITION NO:33373 of 1997

Between:

N.Venkataramana, son of Peddaiah, Hindu, aged aboaut 50 years, Agricultural, residing at Chandramakula Kothapalli village, Hamelt of Arigalavaripalle village, Gurramkonda Mandal, Chittoor District.

..... PETITIONER

AND

The Commissioner of Land Revenue, Andhra Pradesh,
Hyderabad and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P.NOS : 20496 of 1996 and 33373 of 1997

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ORAL COMMON ORDER:

Since both the writ petitions are arising out of common proceedings, they are heard together and disposed of. For convenience sake, the facts as narrated in W.P.No.33373 of 1997, are set out herein below and consequently, the parties are referred to in the same order as they are arrayed in the said writ petition.

Arigelavaripalle village was a Seritiam village, which was taken over under the provisions of Estates Abolition Act, and after conducting the survey and settlement operations, Ryotwari system was introduced in the village. During the survey and settlement operations, land in Sy.No.96/1 of the village is classified as village site poremboke, thus vesting in the Government. There were 21 Tamarind trees standing there on the said land. Of them, pattas over 12 to 13 trees were granted in favour of the villagers,enabling them to collect the usufruct, subject to the payment of the

kist.

The petitioner in W.P.No.33373 of 1997 (henceforth referred to as 'the petitioner') and his father Sri N. Peddaiah, were granted pattas through the Proceedings R.Dis.Nos. 2658/63 and 2659/63 dated 26-04-1963 by the then Tahsildar, Vayalpad, in terms of the Board Standing Order No.18 (henceforth referred to as BSO-18) for the purpose of enjoying the usufruct of the Tamarind trees, subject to their paying the Kist.

Egged on by the 5th respondent, his father-in-law had encroached upon the land of an extent of Ac.0-10 cents and constructed a compound wall, thus in the process preventing access to some of the Tamarind trees standing on Sy.No.96/1. This action of encroachment gave rise to a petition by the petitioner before the 4th respondent-M.R.O., seeking protection to collect the usufruct of the trees. The M.R.O., has granted necessary protection in favour of the petitioner. Immediately, the 5th respondent herein also approached the M.R.O., and sought for orders of protection from the petitioner herein. This raised an element of suspicion in the mind of the M.R.O., as both the parties are soliciting protection from each other. Therefore, the M.R.O., has undertaken inspection of the land in question along with survey staff and, to his dismay, found that one Mr. C. Pullaiah, who is the father-in-law of the 5th respondent had encroached upon Ac.0-10 cents of village site poremboke situate in

Sy.No.96/1 and in the process had also enclosed 10 to 12 Tamarind trees, over some of which, tree pattas were granted in favour of few other persons of the village, including the petitioner herein and his father. Therefore, the M.R.O., had undertaken a further enquiry into the matter and directed that the encroached land be restored back to the Government by demolishing the compound wall. At that stage, the

5th respondent appears to have moved a petition before the M.R.O., pointing out that the 2C tree pattas granted in favour of the petitioner by the then Tahsildar Voyalpad, on 26th April 1963, be cancelled as the writ petitioner is a wealthy pattedar and hence, ineligible to seek patta over the Tamarind trees in question. It was also brought out that Sri N. Peddaiah, father of the writ petitioner had died some time in 1984 itself and, therefore, patta granted in favour of N. Peddaiah, over a Tamarind tree on 26th April 1963, also is liable to be cancelled and the possession be restored to the State Government. In the enquiry conducted by the M.R.O., it has been revealed that the writ petitioner was also granted a 2C patta over another Tamarind tree standing in Sy.No.227 of Sethivaripalle village. This apart, the writ petitioner is a member of a joint family, which owns an extent of A.2-43 cents of wet land and Ac.10-44 cents of dry land and consequently, he is a wealthy pattedar, thus, not entitled for grant of a tree patta. Therefore, the M.R.O., has passed orders on

27th June 1989 canceling the patta granted in favour of the writ petitioner as well as the patta granted in favour of his father simultaneously. He also sought for restoration of the possession of the land encroached upon by Mr. C.Pullaiah, the father-in-law of the 5th respondent. Calling in question the orders passed by the M.R.O., canceling the patta, the writ petitioner herein carried the matter by way of an appeal before the Sub-Collector. The principal contention canvassed by the writ petitioner against the cancellation of the tree patta was that the patta was granted as long back as on 26th April 1963 and, therefore, after 25 long years, no attempt should be made to cancel such a patta. He had also filed, by way of Exs. A-1 and A-2, the voters list of Sethivaripale village forming part of 142 Vayalpad Assembly Constituency to demonstrate that the 5th respondent is not a resident of Arigelavaripalle village and that he is a resident of Bodigutta village, which is a hamlet of Sethivaripale village and, therefore, he has no right, of any manner, to raise an objection with regard to the patta granted in his favour or his father. The Sub-Collector, Madanapalli, who called for a detailed report in the matter from the M.R.O., received report dated 30/31-12-1989 and, obviously, to ensure that the peaceful situation in the village does not turn hostile leading to breakdown of law and order problem, has taken the pains of visiting and inspecting the land on

21st February 1990 duly taking necessary assistance from the staff of the Mandal Revenue Office and realized that the land in Sy.No.96/1 of Arigelavaripalle village is classified as a village site poremboke, hence, vested in the Government and that the entire land was put to community use by the villages for the purpose of crushing the sugar cane crop raised by them and also for the purpose of preparation of Jaggery and that there are approximately 21 Tamarind trees standing on the land and of them over 12 or 13 tree pattas were granted in favour of several individuals for the purpose of enabling them to collect the usufruct subject to the payment of Kist to the Government and approximately, Ac.0-10 cents of land situate in Sy.No.96/1, which is on the rear portion of the residence of Sri C. Pullaiah, has been encroached upon by him and that he has constructed a compound wall, thus, enclosing approximately 10 Tamarind trees. By constructing the compound wall, the access to the villagers has been successfully denied and consequently, the villagers have been denied the advantage of using the village site poremboke for community purposes. The Sub-Collector, had also ascertained the social status of the writ petitioner and found that he is a part of a joint family, which owns Ac.2-43 cents of wet land and more than Ac.10-44 cents of dry land in the village and hence, he is ineligible to stake a claim for the patta over a tree standing on Government land.

The 5th respondent who also participated in the enquiry before the Sub-Collector, had set up a plea that he has purchased the disputed land by way of an un-registered sale deed some time during 1980 from Smt. Pavulamma and he is enjoying the peaceful possession of the land together with the Tamarind trees thereon.

The Sub-Collector had noticed that in terms of BSO 18(2)(c)(1) the power to grant the patta has also conferred the power to cancel the same under the tree tax system. This apart, the Sub-Collector has noticed that condition No.2 of the 2C patta, informs the grantee that it is liable to be cancelled either at the end of any Fasli year without notice or at any time after three months notice. Therefore, the Sub-Collector did not find any legal infirmity in the action of the M.R.O., in canceling the 2C patta granted in favour of the writ petitioner at the end of Fasli year, i.e., 27th June 1989. The Sub-Collector has also found that Sri N. Peddaiah, father of the petitioner to whom the 2C patta over one other Tamarind tree was granted on 26th April 1963, had died nearly six years back itself. Therefore, he found no infirmity in the action of the M.R.O., in securing the restoration of the right over the Tamarind tree by way of cancellation of the patta in favour of Sri N.Peddaiah, who since died. Since the Sub-Collector has noticed that the 5th respondent has set up an improper title to the land belonging to the Government of an extent of Ac.0-10 cents comprising of

Sy.No.96/1, he ordered for the demolition of the compound wall, which was got constructed to enclose the land together with the Tamarind trees standing thereof. The writ petitioner carried the matter by way of Revision before the Joint Collector. The 5th respondent had also carried the matter by way of Revision before the Joint Collector. The Joint Collector had considered the entire matter and through his order dated 13th July 1992, found no merit in any of the contentions and dismissed the Revision preferred by the writ petitioner. The Joint Collector had found that the cancellation of the patta in favour of the writ petitioner is proper and valid. Not content with these orders, passed by the Joint Collector, dismissing both the Revisions preferred by the writ petitioner and the 5th respondent, both of them have carried the matter further by way of a second Revision before the Special Commissioner of Land Revenue. The Special Commissioner considered the entire material, perused the record and also the report of the M.R.O., dated 30/31-12-1989 and has subscribed to the same view, that the cancellation of the 2C patta in favour of the writ petitioner as well as his deceased father, is proper and that the encroachment of the village site poremboke by an extent of Ac.0-10 cents by or at the instance of the 5th respondent is improper and hence, the measures taken by the M.R.O., for restoration of the site in question back to the Government, as correct. It is these orders,

which are called in question in these writ petitions.

I have heard Sri S.V.Sundara Rajan for the writ petitioner, Sri P.Haranatha Gupta for the 5th respondent and the learned Government Pleader for Revenue.

It is not in dispute that the land situate in Sy.No.96/1 of the village is classified as a village site poremboke in the survey and settlement operations carried out after the Estate was taken over by the State Government, therefore, the land together with the Tamarind trees standing thereon, vested in the Government. The Government is free, therefore, to utilize its estates in such a manner so that the larger public interest is sub served by setting apart the village sites for the benefit of the entire community, enabling the land to be put to common and effective utilization and the precious resources of the State are so effectively used not only to raise revenue, but also provide for honourable means of livelihood, for the vulnerable. Therefore, various schemes are devised by it and one such scheme is grant of tree patta, but by the very nature of this grant, the grantee cannot claim any right of ownership, over the precious resources of the State. The produce of the Tamarind trees fetch considerable revenue to the grantee, therefore, during the fruit-bearing season the grantee will collect the usufruct and generate reasonably adequate income there from. Therefore, in his own interest he will be tending to the tree, thus, protecting, in whatever little manner one can do, the social and environmental equilibrium. By the very

nature of the grant, the power of cancellation goes with it. When the M.R.O., in the instant case, had suspected that the claims and counter claims of the petitioner and the 5th respondent are likely to blow over into a major controversy, thus, leading to the disturbance of the law and order situation in the village, he had taken the right steps of cancellation of the patta in favour of the petitioner, hence, no exception need be taken thereto. The grantee does not have any legal right, much less vested right, to claim ownership or any right of permanence for collection of the usufruct of the Tamarind tree in question, merely because 25 years period has elapsed from the time the then Tahsildar, Vayalpad, granted the patta in his favour on 26th April 1963. The M.R.O., had assigned very valid reasons for cancellation of the patta in favour of the writ petitioner, namely;

1) the petitioner was also granted a 2C patta over another Tamarind tree standing at Sy.No.227 of Sethivaripalle village;

2) He is a member of a joint family, which owns extensive wet and dry lands and, therefore, he does not fit into the eligibility criteria for grant of the patta;

3) The disputes between the petitioner and the 5th respondent were likely to have their bad influence over the tranquility and peace prevailing in the village. It is, therefore, appropriate that the State shall take possession of the trees in question.

The 5th respondent or at his instance his father-in-law, as is alleged, cannot encroach upon the village site poremboke and raise a compound wall there on. The 5th respondent or, for that matter, any other person has no right in any manner to encroach upon a village site poremboke, which vested in the State and which is intended and set apart to sub serve the larger community needs and the State is under an obligation to preserve and protect such properties. Therefore, the Sub-Collector, Madanapalli, is right in ordering for the demolition of the compound wall constructed around approximately, Ac.0-10 cents of land situate at Sy.No.96/1 forming part of village site poremboke of Arigelavaripalle village. The Sub-Collector has also taken into consideration and account the policy measures of the State and ordered for enumeration of the eligible persons in the village, particularly, belonging to the Scheduled Castes and Scheduled Tribes, so that the 2C tree pattas can be granted to them over the Tamarind trees standing in Sy.No.96/1. Such a measure is a most welcome measure inasmuch as the eligible beneficiaries belonging to the weaker sections of the society will not only utilize the opportunity for the purpose of improving upon their economic lot, but would also ensure that the trees in question are tended to and protected.

For the foregoing discussion, I do not find any merit in both the writ petitions and they deserve to be

dismissed.

The 5th respondent or any other person, who is claiming the right to the compound wall constructed over the land of an extent of Ac.0-10 cents situate in Sy.No.96/1, forming part of village site poremboke of Arigelavaripalle village, shall demolish the compound wall within a period of two months from the date of receipt of a copy of this order and in the event of failure in doing so and restoring the possession of the land to the M.R.O., the M.R.O., Madanapalli, is directed to serve notice on the occupier of the land, which has been covered by the compound wall and demolish the same, if necessary by using men and machinery at the expense of such a person. To prevent any untoward instances taking place in the village, he may solicit the assistance of police. As soon as the land in question is restored, the M.R.O., will entrust the possession of the Tamarind trees, which have not been assigned so far, to any of the village servants or to the Surpanch of the village and then undertake enumeration of the eligible beneficiaries in the village, identify the most suitable and eligible amongst them based upon their social and economic criteria and grant them the 2C patta over the entire number of Tamarind trees standing in Sy.No.96/1, without leaving even a single tree unassigned so that neither the petitioner nor the 5th respondent will indulge in any activity, which is likely to cause breach of peace not only in the locality,

but also in the village. The M.R.O., will file a detailed report in this regard before the Sub-Collector, Madanapalli on or before 31st October 2007

In the result, both the writ petitions are dismissed with the above directions. But however, in the circumstances, there shall be no order as to costs.

Nooty Ramamohana Rao, J

12th July 2007
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